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IN THE

Supreme Court of the United States

October Term 1957, No. 248
Formerly October Term 1956, No. 1148

RICHARD DOUGLAS FURNISH, M. D.,
Petitioner and Appellant,

vs.

THE BOARD OF MEDICAL EXAMINERS OF THE STATE OF CALIFORNIA,
Defendant and Respondent;

and

THE DISTRICT COURT OF APPEAL OF THE STATE OF CALIFORNIA IN AND FOR THE SECOND APPELLATE DISTRICT,
Respondent.

Petition for Rehearing of Petition for Writ of Certiorari to the District Court of Appeal of the State of California, Second Appellate District.

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Petition for Rehearing of Petition for Writ of Certiorari to the District Court of Appeal of the State of California, Second Appellate District.

Petitioner, Richard Douglas Furnish, M. D., prays that a rehearing be granted and that petitioner's petition for a Writ of Certiorari issue to remand the action to the District Court of Appeal of the State of California, Second Appellate District, to determine if the Federal District Court's acceptance of a plea of *nolo contendere*, together

with the sentence of a fine and the comment of the Federal District Judge that a plea of *nolo contendere* does not carry with it any of the civil penalties, constitutes a finding that the plea of *nolo contendere* does not carry with it any of the civil penalties so as to bar The Board of Medical Examiners of the State of California from suspending the license of the petitioner on account of entering a plea of *nolo contendere* to an income tax law violation.

Statement of Case.

The Board of Medical Examiners of the State of California suspended the license of the petitioner to practice medicine for one year, based on a conviction of violating Title 26, United States Code, Section 145(b), charging that petitioner attempted to defeat and evade income tax for the years 1947 and 1948, the conviction being based on a plea of *nolo contendere* [Certified Record, Clk. Tr. pp. 49-52; 77-80; 100-101]. The Board conceded that it was not seeking to discipline the petitioner for the conviction of an offense involving moral turpitude and that the Board had not sustained the burden of proof on the issue of moral turpitude [Certified Record, Clk. Tr. p. 66].

The District Court of Appeal of the State of California in and for the Second Appellate District affirmed the judgment of the Superior Court of the State of California in and for the County of Los Angeles, dismissing petitioner's petition for writ of mandate to set aside the decision of The Board of Medical Examiners. The opinion

of the District Court of Appeal is reported in 149 A. C. A. No. 2, p. 361.

A petition for rehearing in the District Court of Appeal was denied on April 9, 1957 (149 A. C. A. No. 4, Minutes p. 4).

An application to the District Court of Appeal to grant a rehearing on its own motion was denied April 19, 1957 (150 A. C. A. No. 1, p. 4).

The petition for hearing in the California Supreme Court was denied on May 15, 1957 (48 A. C. No. 12, Minutes p. 2).

The petition for Writ of Certiorari was duly filed in the Supreme Court of the United States and was denied on October 14, 1957.

Question Presented.

Did the acceptance by the Federal District Court of a plea of *nolo contendere* and the sentencing of petitioner to pay a fine, with the Court commenting, "a plea of nolo contendere does not carry with it any of the civil penalties," constitute a finding that a plea of *nolo contendere* does not carry civil penalties so as to bar The Board of Medical Examiners from suspending petitioner's license to practice medicine when there was no showing of moral turpitude?

ARGUMENT.

Points and Authorities.

Federal Judge Leon Yankwich at the time sentence was imposed against petitioner stated:

> "I think on a plea of nolo contendere they do not consider it—at least the Medical Board does not consider that as a ground for revoking his license and, unless they have professional grounds, certainly his license should not be revoked for this particular offense. . . . . A plea of nolo contendere does not carry with it any of the civil penalties." [Certified Record, Clk. Tr. pp. 63-64.]

The Board of Medical Examiners has, by suspending the petitioner, ruled that a plea of *nolo contendere*, without a showing of moral turpitude, does carry civil penalties. This is in direct contravention of the finding of the Court when it passed sentence on the petitioner.

The Board of Medical Examiners, by its action suspending petitioner, has increased the punishment of the petitioner.

In the case of *In re Hallinan*, 43 Cal. 2d 243, the Supreme Court of California said on page 250:

> "Since Section 145 Subdivision (b), is a United States statute, we must accept the interpretation given it by the United States Courts."

Notwithstanding this opinion by the California Supreme Court, the petitioner herein has been suspended by an order which contravenes the interpretation placed on the acts of the petitioner in the light of Section 145, Subdivision (b) of the Internal Revenue Code.

It is the generally accepted rule that every Court has inherent power to enforce its judgments and decrees.

Florida Guaranteed Securities v. McAllister, 47 F. 2d 762.

The Court may make such orders and issue such process as may be necessary to render the Court's judgments and decrees effective, and this power is not affected by the fact that the decree is final.

Security Trust & Savings Bank v. Southern Pacific, 6 Cal. App. 2d 581, 45 P. 2d 268, 270.

The power to enforce their decrees is necessarily incident to the jurisdiction of Courts.

Commonwealth v. Lewis, 253 Pa. 171.

The Federal Court may stay proceedings in a State tribunal where necessary to protect or effectuate its judgment.

28 U. S. Code, Sec. 2283.

A rehearing should be granted, as intervening circumstances of a substantial or controlling effect have occurred in that the Supreme Court apparently did not determine whether the proceedings in the Federal District Court constituted a finding that the plea of *nolo contendere* does not carry with it any of the civil penalties so as to bar The Board of Medical Examiners from suspending petitioner's license to practice medicine.

Furthermore, the question of remanding the case to the District Court of Appeal of the State of California, to determine whether the Federal District Court's proceedings constituted a finding that would bar The Board of

Medical Examiners from suspending petitioner's license on the basis that a plea of *nolo contendere* does not carry with it any of the civil penalties, has not been previously presented.

Wherefore, it is respectfully urged that the Petition for Rehearing should be granted so that the case may be remanded to the District Court of Appeal of the State of California in and for the Second Appellate District for the reasons stated.

Respectfully submitted,

MURRAY M. CHOTINER,
RUSSELL E. PARSONS,
By MURRAY M. CHOTINER,
Attorneys for Petitioner, Richard Douglas Furnish, M. D.

Certificate of Counsel.

Murray M. Chotiner does hereby certify:

1. That he is one of counsel for the petitioner;

2. That the Petition for Rehearing is presented in good faith and not for delay; and

3. That the petition is restricted to the grounds hereinabove stated.

MURRAY M. CHOTINER.